

The 2008 State Liability Systems Ranking Study

Executive Summary

The 2008 State Liability Systems Ranking Study was conducted for the U.S. Chamber Institute for Legal Reform among a national sample of in-house general counsel or other senior corporate litigators to explore how reasonable and balanced the tort liability system is perceived to be by U.S. business. The 2008 ranking builds on previous years' work¹ where each year all 50 states are ranked by those familiar with the litigation environment in that state. Prior to these rankings, information regarding the attitudes of the business world towards the legal systems in each of the states had been largely anecdotal. The State Liability Systems Ranking Study aims to quantify how corporate attorneys view the state systems. While we can look to the past 6 years' rankings to see general movement, a direct trend can only be made from the previous two years (2006 and 2007). The reason for this is that in 2006 we changed the survey design slightly, adding two elements – *having and enforcing meaningful venue requirements* and *non-economic damages*.

Two in five senior attorneys (41%) view the fairness and reasonableness of state court liability systems in America as excellent or pretty good while just over half (55%) view the systems as only fair or poor. **A majority (63%) report that the litigation environment in a state is likely to impact important business decisions** at their company, such as where to locate or do business, up from 57% in 2007. [See Tables 1 and 2]

Respondents were first screened for their familiarity with states, and those who were very or somewhat familiar with the litigation environment in a given state were then asked to evaluate that state. It is important to remember that **courts and localities within a state may vary a great deal** in fairness and efficiency. However, respondents had to evaluate the state as a whole. To explore the detailed nuances within each state would have required extensive questioning for each state and was beyond the scope and purpose of this study. However, other studies have demonstrated this variability within a state. For example, several studies have documented very high litigation activity in certain county courts such as Madison County, Illinois and Jefferson County, Texas, revealing that these counties have "magnet courts" that are extremely hospitable to plaintiffs. Thus, it is possible that some states received low grades due to the negative reputation of one or two of their counties or jurisdictions.

Overall Rankings of States

Respondents were asked to give states a grade ("A", "B", "C", "D" or "F") in each of the following areas: having and enforcing meaningful venue requirements, overall treatment of tort and contract litigation, treatment of class action suits and mass consolidation suits, punitive damages, timeliness of summary judgment or dismissal, discovery, scientific and technical evidence, non-economic damages, judges' impartiality and competence, and juries' predictability and fairness. These grades were combined to create an **overall ranking of state liability systems**.²

Further, as the following table highlights, there has been a significant increase in the overall average scores over time.

Year	Average Overall Score among 50 States (weighted by n-size)
2008	59.4
2007	58.1
2006	55.3
2005	52.8
2004	53.2
2003	50.7
2002	52.7

While there continues to be a wide disparity between the states in terms of those that are perceived to be the best and the worst, nonetheless the overall trend is improving. According to the general counsel and senior litigators, the states doing the best and worst job of "creating a fair and reasonable litigation environment" are [See Table 3]

Top 5	Bottom 5
Delaware (#1)	West Virginia (#50)
Nebraska (#2)	Louisiana (#49)
Maine (#3)	Mississippi (#48)
Indiana (#4)	Alabama (#47)
Utah (#5)	Illinois (#46)

Most Important Issues to Focus on to Improve Litigation Environment

The study also asked respondents to name the most important issue that state policymakers who care about economic development should focus on to improve the litigation environment in their state. Speeding up the trial process was cited by 12% of our respondents as the most important issue. Other top issues named were reform of punitive damages (10%), eliminate unnecessary lawsuits (9%), tort reform issues in general (8%), fairness and impartiality (5%) and high litigation costs (5%). [See Table 4]

Worst Local Jurisdictions

In order to understand if there are any cities or counties which might impact a state's ranking, respondents were asked which five cities or counties have the least fair and reasonable litigation environments. The worst jurisdiction was Los Angeles, California (mentioned by 14% of the

respondents), followed by Chicago/Cook County, Illinois (11%) and various cities and counties in Texas (11%). [See Table 5]

In order to understand why respondents feel negatively about particular jurisdictions, a follow-up question was asked to those who cited a jurisdiction. The top reason given as to why a city or county has the least fair and reasonable litigation environment is biased judgment, given by 20% of respondents, and is the number one reason by a large margin. The next tier includes corrupt/unfair system, unfair jury/judges, have read/seen a report on a case and unpredictable jury/judges (each mentioned by 5% of respondents). [See Table 7]

Conclusion

In conclusion, one important point to note is that these rankings and results are based on the perceptions of these senior corporate attorneys. It is also important to realize that the perceptions may be heavily influenced by certain individual city or county court jurisdictions within the state. But, as we have noted in the past, perception does become linked with reality. If the states can change the way litigators and others perceive their liability systems, we may find considerable movement in their rankings in the future. Once these perceptions change, the overall business environment may be deemed more hospitable as well.

¹2007, 2006, 2005, 2004, 2003 and 2002

² The "Overall Ranking of State Liability Systems" table was calculated by creating an index using the scores given on each of the 12 key elements as well as the overall performance score. All of the key element items were highly correlated with one another and with overall performance. The differences in the relationship between each item and overall performance were trivial, so it was determined that each item should contribute equally to the index score. The index was created from the mean across the 12 items plus the overall performance score, which was rescaled from 0 to 100 prior to averaging them together.